

# **Maine Center for Disease Control and Prevention WIC Nutrition Program**

Effective: October 1, 2011

Policy No. VM-7

Revised: August 1, 2016

## **Administrative Review of State Agency Actions**

### **Authority**

7 CFR §246.4(a)(14)(iii) and §246.18;

22 MRSA §255; and

10-144 CMR Chapter 286 §V

### **Policy**

1. Any vendor has the right to seek review pursuant to 10-144 CMR Chapter 286 if it is adversely affected by a Local or State Agency decision in the following instances:
  - 1.1. Denial of authorization;
  - 1.2. Termination of the Vendor Agreement for cause;
  - 1.3. Disqualification from the Maine CDC WIC Nutrition Program during the contract period, other than disqualification due to a SNAP disqualification;
  - 1.4. Imposition of sanction points; and
  - 1.5. Imposition of a civil money penalty in lieu of disqualification.
2. Not subject to administrative review per 7 CFR §246.18(a)(1)(iii) are:
  - 2.1. The validity of the State agency's vendor limiting criteria or vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;
  - 2.2. The validity of appropriateness of the State agency's selection criteria for competitive price;
  - 2.3. The validity or appropriateness of the State agency's participant access criteria and the participant access determination;
  - 2.4. The State agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the Authorized Formula Source List;
  - 2.5. The validity or appropriateness of State agency's prohibition of incentive items;
  - 2.6. The State agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;

- 2.7. The State agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;
- 2.8. The expiration of a vendor's agreement;
- 2.9. Disputes regarding FI payments and vendor claims (other than providing an opportunity to justify or correct a vendor overcharge or other error within 15 days of the notice of vendor claim); and
- 2.10. Disqualification of a vendor as a result of disqualification from SNAP.

## **Procedures**

1. All administrative hearings will be conducted in accordance with the rules contained in the WIC Federal Regulations, 7 CFR §246.18, and Department of Health and Human Services Administrative Hearings Regulations, 10-144 CMR Chapter 1.
2. Any vendor adversely affected by a Local or State Agency decision will be informed in writing, at least fifteen (15) days prior to the effective date of the action, of the reasons for the action, the citation to the authority the action is based on, and of the right to an administrative hearing.
3. A request for an administrative hearing is defined as a written or verbal statement by a vendor requesting the opportunity to present their case to a higher authority. If a request for a hearing is made to the State Agency, a Request for Administrative Hearings Form (Appendix VM-7-A) will be completed immediately by the State Agency and forwarded to the Office of Administrative Hearings.
4. Requests for an administrative hearing must be made within 60 days from the date of the written notice of the adverse action. Requests received by Local Agencies will be forwarded to the State Agency within three (3) working days of receipt.
5. The Department shall not deny or dismiss a request for an administrative hearing unless:
  - 5.1. The request is not received within the time limits set by the Department; or
  - 5.2. The request is withdrawn in writing by the appellant or his representative; or
  - 5.3. The appellant or representative fails, without good cause, to appear at the scheduled hearing; or
  - 5.4. The appellant is not entitled to a hearing as set forth above.
6. Adverse actions against a vendor shall be stayed until final agency action.
7. The appellant is solely responsible for the cost of his or her legal counsel.
8. The State Agency shall immediately forward any request for withdrawal of an administrative hearing to the Hearing Officer.
9. An administrative hearing may not be delayed or canceled for the purpose of considering a possible adjustment unless the appellant requests such a delay or cancellation.

10. The appellant shall be provided with adequate opportunity to examine all records and documents to be presented at the administrative hearing, at any time after a request for a hearing has been made.
11. Any representative of the appellant must have written authorization from the appellant to examine such records.
12. All administrative hearing decisions will be issued in accordance with the rules contained in 10-144 CMR Chapter 1, Department of Health and Human Services Administrative Hearings Regulations.
13. An appellant may appeal an unfavorable decision to Superior Court pursuant to M.R.Civ.P.80C. Unless otherwise ordered by the Superior Court, the Hearing Officer's decision shall not be stayed.
14. The State Agency will keep a record of all administrative hearings and their outcome. Information will include:
  - 14.1. Vendor number;
  - 14.2. Store name;
  - 14.3. Termination/disqualification date;
  - 14.4. Reason for termination/disqualification;
  - 14.5. Administrative hearing date;
  - 14.6. Hearing Officer's recommended decision;
  - 14.7. Date of recommended decision;
  - 14.8. Commissioner's final decision on Order of Reference; and
  - 14.9. SNAP notified – yes or no.